

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 17.20.201,)	ON PROPOSED AMENDMENT AND
17.20.202, 17.20.207,)	REPEAL
17.20.301, 17.20.602,)	
17.20.603, 17.20.606,)	(MAJOR FACILITY SITING
17.20.607, 17.20.804,)	ACT)
17.20.807, 17.20.815,)	
17.20.818, 17.20.901,)	
17.20.907, 17.20.920 through)	
17.20.924, 17.20.928,)	
17.20.929, 17.20.1301,)	
17.20.1302, 17.20.1304,)	
17.20.1305, 17.20.1311,)	
17.20.1426, 17.20.1604,)	
17.20.1606, 17.20.1607,)	
17.20.1803, 17.20.1804,)	
17.20.1901 and 17.20.1902 and)	
the repeal of 17.20.1427)	
through 17.20.1431,)	
17.20.1434 through)	
17.20.1440, and 17.20.1444)	
through 17.20.1447 pertaining))	
to the Montana Major Facility))	
Siting Act)	

TO: All Concerned Persons

1. On December 1, 2004, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 22, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.20.201 DEFINITIONS Unless the context requires otherwise, in this subchapter:

(1) through (3) remain the same.

(4) "~~Long-range plan~~ Geothermal exploration plan" means the plan, actual or tentative, which a person has for the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation related to possible future development of a ~~utility~~ facility employing geothermal resources for the ensuing 10 years after submission to the department under this subchapter.

(5) through (8) remain the same.

AUTH: 75-20-1001, MCA

IMP: 75-20-1001, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, removed the requirement for filing of 10-year plans, but 75-20-1001, MCA, requires persons who conduct geothermal exploration to notify the Department. Consequently, the notification requirement (long-range plan) would be renamed "geothermal exploration plan" to remove reference to 10-year plans and the time period for the notification changed to one year to avoid implying that the Department is regulating geothermal exploration as it was when 10-year plans were required. The term "utility" would be removed because the distinction between utility facilities was removed from law during the 53rd Legislative session in 1993.

17.20.202 ~~LONG-RANGE~~ GEO THERMAL EXPLORATION PLANS (1)
~~On November 1, 1974, every person shall submit a long-range plan. In addition, every~~ Every person shall submit a ~~long-range~~ geothermal exploration plan on April 1, 1975, and each year thereafter.

(2) ~~Twenty~~ Two copies along with an electronic copy acceptable to the department of the long-range geothermal exploration plan shall be submitted to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

~~Less than 20 copies may be submitted upon prior approval of the department.~~

(3) The ~~long-range~~ geothermal exploration plan shall be typed, printed, or otherwise legibly reproduced on 8½" x 11" paper. Maps, drawings, charts, or other documents bound in a ~~long-range~~ geothermal exploration plan shall be cut or folded to 8½" x 11" size. Maps, drawings, or charts may accompany a ~~long-range~~ geothermal exploration plan as separate exhibits.

(4) remains the same.

(5) All pages in a ~~long-range~~ geothermal exploration

plan shall be consecutively numbered. Maps, drawings, or charts accompanying the ~~long-range~~ geothermal exploration plan as exhibits shall be identified as "Exhibit ____" and, if comprising more than ~~1~~ one sheet, shall be numbered "sheet ____ of ____."

(6) Within each ~~long-range~~ geothermal exploration plan shall be included:

(a) remains the same.

(b) the approximate dates for gathering geological and hydrogeological data by boring of test holes or other underground exploration, investigation, or experimentation, related to possible future development of geothermal resources shall be listed;

(c) remains the same.

(d) the general location, a description of the area involved, and the size and type of all drill holes, bore holes, or wells to be drilled, instruments, and all other equipment used.

(7) Any change in plans which would result in some action prior to the filing of the next ~~long-range~~ geothermal exploration plan shall be reported to the department within 60 days.

AUTH: 75-20-1001, MCA

IMP: 75-20-1001, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, removed the requirement for filing of 10-year plans. Consequently the term "long-range" has been replaced with the term "geothermal exploration" and the requirement for submission of a plan on November 1, 1974, has been deleted.

In (2) the number of copies has been reduced from 20 to two in order to reduce unnecessary paperwork. An electronic copy acceptable to the Department would facilitate production and distribution of any additional copies needed.

In (6)(b) the word "hydrogeological" is proposed for addition to explicitly allow the Department to obtain information on this phase of geothermal exploration.

In (6)(d) language has been revised for clarity.

17.20.207 CONFIDENTIALITY (1) The pertinent technical data submitted pursuant to ARM 17.20.204 through 17.20.206 shall be for the exclusive use of the department and other state agencies involved in geothermal research or regulation, and shall remain confidential for a period of ~~2~~ two years following commencement of operations for the drilling of an actual well for testing a potential geothermal resource or ~~6~~ six months following completion of a well capable of producing

a geothermal resource, unless approved in writing for release earlier by the person who submitted such data or unless such data are entitled to protection under the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA.

(2) A person furnishing documents that the person believes are entitled to protection as trade secrets shall notify the department before or at the time the person furnishes the documents to the department. If the department determines that the information is protected, it shall maintain the documents as confidential. If the department determines that the documents are not entitled to protection, it shall notify the person and maintain the documents as confidential for a period reasonably necessary for the person to obtain a court order requiring the department to maintain confidentiality, or to retrieve the documents from the department.

AUTH: 75-20-1001, MCA

IMP: 75-20-1001, MCA

REASON: These amendments are necessary to allow the Department to determine whether documents are protected from public disclosure by the right to privacy contained in the Montana Constitution and the Uniform Trade Secrets Act. If the information is not protected, the information must be disclosed. The proposed amendment gives the Department the authority to keep information confidential for the time necessary to obtain a court order. The new language allows the Department to comply with the Constitution and the Uniform Trade Secrets Act and avoid liability for violation of the provisions.

17.20.301 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) through (4) remain the same.

(5) "Application" means an application to the department for a certificate of environmental compatibility compliance under 75-20-211, MCA.

(6) through (8)(b) remain the same.

~~(9) "Area of concern" means a geographic area or location specified in ARM 17.20.1430 and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems, but where formal public recognition or designation has not been granted.~~

(10) remains the same, but is renumbered (9).

~~(11)~~ (10) "Baseline study" means a detailed analysis of

a proposed site for a generation or conversion facility and impact zones or alternative ~~routes~~ facility locations and impact zones for a linear facility for purposes of impact assessment and comparison and selection of a preferred ~~route~~ facility location.

(12) and (13) remain the same, but are renumbered (11) and (12).

~~(14)~~ (21) "Centerline Facility location" means a location for a linear facility ~~within an approved route~~ accurately depicted to within 250 feet unless otherwise specified by the ~~board~~ department by a line one millimeter or less in width drawn on a 1:24,000 map, and which may or may not be surveyed.

(a) "Alternative centerline facility location" means one of the alternative locations potentially suitable for construction of a linear facility ~~that the applicant or the department has selected after study of the approved route described in the certificate and~~ that has been depicted on overlays to the base map described in ~~ARM 17.20.1703(1)~~ Circular MFSA-2, section 3.3;

(b) "Approved centerline facility location" means the precise location for a linear facility that is approved by the ~~board~~ department and accurately depicted to within 250 feet, unless otherwise specified by the department, in the certificate ~~on the map described in ARM 17.20.1706(3)~~;

(c) "Preferred centerline facility location" means the applicant's desired location for a linear facility as depicted on overlays to the base map described in ~~ARM 17.20.1703(1)~~ after study of the approved route and the centerline for which board approval is sought Circular MFSA-2.

~~(15) "Centerline evaluation" means an analysis to determine the location of the centerline of a linear facility within the approved route.~~

(16) remains the same, but is renumbered (13).

~~(17) "Corridor" means:~~

~~(a) "Approved corridor" means an area of land of a width specified by the board that is generally suitable for siting a linear associated facility.~~

~~(b) (41) "Study corridor area" means a geographical area of variable size and width within the study area that is potentially suitable for siting a linear facility as determined by the reconnaissance and that contains one or more routes.~~

(18) through (23) remain the same, but are renumbered (14) through (19).

~~(24) "Exclusion area" means a geographic area specified in ARM 17.20.1428 legally designated for its environmental values and having legally defined boundaries wherein facility~~

~~construction or operation is prohibited, excepting those portions of the area where permission to site a facility has been obtained from the legislative or administrative unit of government with direct authority over the area.~~

(25) remains the same, but is renumbered (20).

(26) through (28) remain the same, but are renumbered (22) through (24).

~~(29)~~ (33) "Inventory Overview survey" means the collection and mapping of environmental information within ~~candidate siting areas or a study corridors area~~ for the purpose of selecting alternative ~~routes~~ facility locations.

(30) through (37) remain the same, but are renumbered (25) through (32).

(38) and (39) remain the same, but are renumbered (34) and (35).

~~(40) "Reconnaissance" means a preliminary assessment of the study area based on published or readily available data used to select study corridors.~~

(41) remains the same, but is renumbered (36).

~~(42) "Route" means a preliminary location for a linear facility accurately depicted to within 0.1 mile as specified by a line one millimeter or less in width drawn on a 1:24,000 map.~~

~~(a) "Alternative route" means one of the alternative locations potentially suitable for the construction of a linear facility that the applicant has selected for baseline study and has depicted on the base map described in ARM 17.20.1440(2).~~

~~(b) "Approved route" means a linear strip of land of a width specified by the board on the map described in ARM 17.20.1701 that contains one or more alternative centerlines for a linear facility.~~

~~(c) "Preferred route" means the applicant's preferred location for a linear facility and the route for which a certificate is sought as depicted by the applicant on the base map described in ARM 17.20.1440(2).~~

~~(43) "Sensitive area" means a geographic area or location specified in ARM 17.20.1429 and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems and where these values or constraints have received formal public recognition or designation or are in the process of being designated at the time the application is filed.~~

(44) remains the same, but is renumbered (37).

~~(45)~~ (38) "Significant adverse impact" means a detrimental change in the social, economic, cultural, physical or natural environment as a result of the construction,

operation, maintenance, or decommissioning of a facility, as determined by the ~~board~~ department on the basis of the impact's severity, duration, geographic extent, or frequency of occurrence or the uniqueness of the affected environmental value or its importance to the state and/or to society.

(46) and (47) remain the same, but are renumbered (39) and (40).

~~(48) "Study area" means the geographical region containing the locations where a proposed linear facility reasonably could be sited, considering the applicant's service area, the intended market area(s) of the product the facility transports, and/or the electrical system problems that would be solved by the facility.~~

(49) remains the same, but is renumbered (42).

AUTH: 75-20-105, MCA

IMP: 75-20-104, MCA

REASON: The proposed amendments to this rule, as more specifically explained below, are necessary for consistency with the proposed consolidation of information requirements from the current five-step alternative siting study for linear facilities covered under MFSA to a proposed three-step alternative siting study.

Section (5) is being amended because the Legislature, in Chapter 329, Laws of 1997, changed the name of the certificate issued pursuant to the Major Facility Siting Act by replacing the phrase "environmental compatibility" with "compliance." The proposed revision would conform the rule to the amended statute.

The proposed deletion of (9) is for consistency with the proposed consolidation of information requirements from the current five-step alternative siting study for linear facilities covered under MFSA to the proposed three-step alternative siting study.

The proposed replacement of the term "routes" with "facility locations" and "route" with "facility location" in (9), renumbered (10), is for consistency in the proposed consolidation of information requirements from the current five-step alternative siting study for linear facilities covered under MFSA to a three-step alternative siting study.

The proposed replacement of the term "centerline" with "facility location" in (14)(a), (b) and (c), renumbered (21)(a), (b) and (c), is consistent with Board action in March 2001, that repealed subchapter 17 of Chapter 20 addressing evaluation of centerlines for linear facilities. Use of the phrase "facility location" clarifies what the Department would be evaluating and certifying under MFSA.

The proposed deletion of the phrases "within an approved route," "that the applicant or the department has selected after study of the approved route described in the certificate and" in (14)(a), renumbered (21)(a), and the phrase "after study of the approved route and the centerline for which board approval is sought" in (14)(c), renumbered (21)(c), is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities.

The term "board" is being replaced by the term "department" throughout the rule because the Department is now charged with making the certification decision and the Board only hears appeals.

The proposed deletion of the phrase "on the map described in ARM 17.20.1706(3)" in (14)(b), renumbered (21)(b), is necessary because subchapter 17 was repealed in March of 2001.

Specification of a narrower width, if necessary, would be done in a certificate either in a narrative or on a map.

The proposed deletion of (15) is consistent with Board action in March of 2001 that repealed subchapter 17 addressing evaluation of centerlines for linear facilities.

The proposed deletion of (17) and (17)(a) is for consistency in the proposed consolidation of information requirements for the alternative siting study for linear facilities. The proposed replacement of the term "corridor" with "area" and the deletion of the phrase "determined by the reconnaissance and that contains one or more routes" in (17)(b), renumbered (41), are consistent with the proposed consolidation of information requirements for the alternative siting study for linear facilities. The proposed addition of the phrase "size and" provides applicants flexibility in their completion of this step in the alternative siting study. Deletion of "within the study area" provides clarity to the proposed definition.

The proposed deletion of (24) is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities. Current rules call wilderness areas and national primitive areas "exclusion areas." Under both current and proposed rules these areas could be considered for a facility location.

The proposed replacement of "inventory" with "overview survey," "corridors" with "area" and "routes" with "facility locations" in (29), renumbered (33), are for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities. Proposed deletion of the phrase "candidate siting areas or" also conforms to this proposed consolidation. Addition of the word "a" is for grammar.

The proposed deletion of (40) is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities.

The proposed deletion of (42) through (42)(c) is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities.

The term "board" in (45), renumbered (38) is being changed to "department" because the Department is now charged with making the certification decision and the Board only hears appeals.

Subsection (48) is being proposed for deletion because the previous definition for study area provided in (17)(b), renumbered (41), is a better fit with the proposed and consolidated alternative siting study.

17.20.602 NOTIFICATION OF REQUEST FOR WAIVER (1) The applicant shall submit a written notice of request for a waiver to the ~~board~~ department, by certified mail or personal service. The notice must be accompanied by an affidavit of service showing that copies of the notice have been served on the department ~~and the units of local government and agencies listed in 75-20-211(3), MCA~~, and that public notice of the request for waiver has been given. Public notice shall be given to persons residing within the area in which any portion of the facility would be located if the waiver is granted. Notice shall be given by publication of a display ad containing a summary description of the facility and a summary of the contents of the request for waiver, once in each of ~~3~~ three consecutive weeks in newspapers of general circulation in that area.

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-304, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, gave the authority to waive authorizations to the Department. This authority had previously resided with the Board. The Legislature, in Chapter 217, Laws of 2003, changed the law concerning service of an application for a certificate. Proposed language reflects current legislative direction.

17.20.603 CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(1), MCA (1) For a waiver of provisions described in 75-20-304(1), MCA, the notice of request for waiver must contain the following information:

(1) and (2) remain the same, but are renumbered (a) and

(b).

~~(3)~~ (c) a description of the preferred site for a non-linear facility or preferred route proposed location for the proposed linear facility, alternative sites or ~~routes~~ locations which were considered, an explanation of the reasons for selecting the preferred proposed site or ~~route~~ location, and a description of the significant environmental advantages and disadvantages of the preferred proposed and alternate ~~sites or routes~~ locations;

(4) and (5) remain the same, but are renumbered (d) and (e).

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-304~~(1)~~, MCA

REASON: The proposed editorial changes are necessary to be consistent with proposed changes in language pertaining to the alternative siting study for linear facilities in Circular MFSA-2. In Chapter 329, Laws of 1997, the Legislature removed the requirement that a route for a linear facility first be certified and a centerline be approved later. Instead, the Department reviews reasonable alternative locations to determine compliance with standards in 75-20-301, MCA.

17.20.606 BOARD DEPARTMENT ACTION ON REQUEST FOR WAIVER

(1) Within 90 days after receipt of the information required by ARM 17.20.603 or 17.20.605, the ~~board~~ department shall give notice and set a date for a hearing.

(2) The ~~board~~ department shall give notice and set a date for a hearing and render a decision as soon as practicable after receipt of the information required by ARM 17.20.604.

(a) remains the same.

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-304, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, gave the authority to waive certain aspects of certification proceedings to the Department. This authority had previously resided with the Board. Proposed language reflects current legislative direction.

17.20.607 CONTENT OF AN APPLICATION FOLLOWING RECEIPT OF WAIVER PURSUANT TO 75-20-304(3), MCA (1) An application for a facility which has been granted a waiver pursuant to 75-20-304(3), MCA, must contain applicable information required by

ARM ~~17.20.1415, 17.20.1416, 17.20.1418, and 17.20.1419~~, for the preferred site only.

(2) remains the same.

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-211, 75-20-304(3), ~~75-20-503~~, MCA

REASON: ARM 17.20.1415, 17.20.1416, and 17.20.1419 were repealed in 2001. Information formerly in ARM 17.20.1419 has been incorporated into Circular MFSA-2. Section 75-20-503, MCA, was repealed in 1997. The proposed language reflects these changes.

17.20.804 DOCUMENTATION OF INFORMATION SOURCES AND OMISSION OF CERTAIN INFORMATION REQUIREMENTS (1) remains the same.

(2) An application should include only information relevant to the facility. The application requirements in these rules address a comprehensive range of issues for the wide range of facilities covered by the Act. The applicability or relevance of the requirements to a particular facility are dependent on its type, its design, how its output will be marketed, its size or length, and on the characteristics and complexity of the geographic area(s) where the facility may be located. An application shall contain the information required by subchapters ~~7 through 8 and 9~~ and ~~12~~ 13 through 15 unless specific provisions for submitting less information are contained in the rule, or unless the department gives written permission, prior to filing the application, to omit certain information. Unless a rule provides differently, an applicant desiring to omit information it considers irrelevant to the project shall submit to the department a written request to make the omission, along with documentation justifying its request. The department shall review the applicant's request and shall make a written determination of whether the information may be omitted. If there is a substantial cost to the department to verify the applicant's justification, the applicant shall contract with the department and reimburse it for expenses incurred pursuant to 75-20-106, MCA.

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-211, MCA

REASON: Subchapters 7 and 12 were repealed by the Board in March 2001. Consequently, references to these subchapters are proposed for deletion and the references are being renumbered.

17.20.807 AMENDMENT TO APPLICATION--NEW APPLICATION

(1) through (1)(c) remain the same.

(2) The department may determine that a new application and a filing fee ~~is~~ are required if the extensive nature of a change or the timing of the notification of a change or addition to the original application would not allow the department, or the other agencies listed in 75-20-216~~(5)~~, MCA, to discharge their duties and responsibilities under the Act and these rules under the statutory time requirements and filing fee or under contractual terms pursuant to 75-20-215~~(2)~~, MCA. If a new application and a filing fee ~~is~~ are required, processing of the original application shall be terminated. If the total filing fee was paid at the time of filing, unexpended portions of the fee shall be returned to the applicant or credited to the new fee at the applicant's request if a new application is to be filed. For an application being processed under a contract pursuant to 75-20-215~~(2)~~, MCA, the applicant shall be billed for the department's expenses up to the date of termination. Any studies completed or partially completed at the time of termination that are relevant to an amended or new application shall not be duplicated.

(3) remains the same.

(4) The applicant shall give notice upon filing an amendment or a new application as set forth in 75-20-211~~(3)~~, ~~(4)~~ and ~~(5)~~, MCA.

(5) remains the same.

AUTH: 75-20-105, MCA

IMP: 75-20-211, 75-20-213, 75-20-215, 75-20-216, MCA

REASON: In (2), the rule given shows the wrong subsection in MFSA.

Section 75-20-211(4), MCA, was repealed in the 2003 Legislative session. That is reflected in the proposed amendment to (4) of this rule.

17.20.815 LINEAR FACILITIES, ESTIMATED ANNUAL COSTS

(1) An application for a linear facility must contain a detailed analysis of the annual costs of the facility for purposes of comparing the facility with alternatives, as required by 75-20-301~~(2)(e)~~, MCA, including detail on the capital and operating costs and operational characteristics of the facility.

(1) through (10) remain the same, but are renumbered (2) through (11).

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-215, MCA

REASON: This rule has been renumbered in accordance with guidelines from the Secretary of State's office. The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.818 LINEAR FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS (1) and (2) remain the same.

(3) For external costs the information provided under ~~ARM 17.20.1444 or 17.20.1445~~ Circular MFSA-2, Sections 3.7 and 3.8 is sufficient.

(4) Information on benefits must include, where relevant, benefits to the consumer, benefits to the applicant, and benefits to Montana. Information concerning these benefits may include increased reliability, increased transient stability, increased power transfer capability, decreased chance of voltage drop and other economic considerations such as current system costs. The applicant may not double count benefits and shall include nonmonetary benefits wherever possible.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-215, MCA

REASON: The Board is proposing that the text of ARM 17.20.1444 and 17.20.1445 is being repealed and transferred, with amendments, to Circular MFSA-2, Sections 3.7 and 3.8 respectively. This proposed change is reflected in the proposed amendment to (3).

The proposed amendment to (4) would clarify what types of benefits would likely occur from a proposed linear facility. The benefits mentioned comprise the need determination of the facility, although benefits need not be limited to these. The applicant is also required to follow the standard economic practices for comparing benefits and costs of avoiding double counting and including nonmonetary benefits. The proposed amendment will also provide more guidance to applicants.

17.20.901 GENERATION AND CONVERSION FACILITIES, EXPLANATION OF PURPOSE AND BENEFITS OF THE PROPOSED FACILITY

(1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.907 TRANSMISSION FACILITIES, REGIONAL RELIABILITY CRITERIA (1) through (1)(e) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.920 ELECTRIC TRANSMISSION LINES, EXPLANATION OF NEED

(1) An application for an electric transmission line must contain an explanation of the need for the facility, based on, but not limited to, ± one or more of the following conditions:

(1) through (5) remain the same, but are renumbered (a) through (e).

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.921 ELECTRIC TRANSMISSION LINES, TRANSIENT STABILITY CONSIDERATIONS (1) For electric transmission lines where transient stability considerations are a basis of need, an application must contain the following information:

(1) and (2) remain the same, but are renumbered (a) and (b).

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.922 ELECTRIC TRANSMISSION LINES, POWER TRANSFER CAPACITY, VOLTAGE DROP (1) For electric transmission lines

where power transfer capacity or voltage drop is a basis of need, the application must contain an explanation of the problem situation including the following information:

(1) through (5) remain the same, but are renumbered (a) through (e).

(a) through (c) remain the same, but are renumbered (i) through (iii).

(6) remains the same, but is renumbered (f).

(a) through (d) remain the same, but are renumbered (i) through (iv).

AUTH: 75-20-105, MCA

IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.923 ELECTRIC TRANSMISSION LINES, RELIABILITY OF SERVICE (1) For electric transmission lines where reliability of service is a basis of need, an application must contain the following:

(1) through (3) remain the same, but are renumbered (a) through (c).

AUTH: 75-20-105, MCA

IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.924 ELECTRIC TRANSMISSION LINES, ECONOMY CONSIDERATIONS (1) For electric transmission lines where economy considerations are a basis of need, an application must contain the following, as relevant:

(1) through (7) remain the same, but are renumbered (a) through (g).

(2) If the transmission grid is managed by a regional transmission organization (RTO) formed under FERC order 2000, the application must report:

(a) the extent of congestion and the costs of congestion throughout the year, with and without the proposed facility, for each affected flow path on the regional grid;

(b) a projection of the transmission rights that would be created by the proposed facility; and

(c) planning evaluations of the proposed facility written either by the RTO or another regional planning organization.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. New (2) is being proposed for inclusion because Montana's transmission lines will soon be under the authority of Regional Transmission Organizations that are forming under order of the Federal Energy Regulatory Commission. The new language addresses some of the general rules that new transmission lines would have to meet under an RTO. The information required under the proposed amendment is necessary to support findings required by 75-20-301, MCA.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.928 OTHER LINEAR FACILITIES, EXPLANATION OF NEED
(1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.929 LINEAR FACILITIES, INTERCONNECTION AGREEMENTS
(1) through (2) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1301 GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) through (3) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1302 GENERATION AND CONVERSION FACILITIES,
CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED
FACILITY

(1) through (5) remain the same.

AUTH: 75-20-105, MCA

IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1304 ~~SERVICE AREA UTILITIES~~, ELECTRIC TRANSMISSION
LINES, EVALUATION OF ALTERNATIVES (1) An application must contain an evaluation of the nature and economics of relevant alternatives to the proposed facility, which could in whole or in part address the problem or opportunity as described in ARM 17.20.920 that the proposed facility is designed to address, including transmission alternatives, alternative energy resources, alternative transmission technologies, alternative levels of reliability and nonconstruction alternatives. The no action alternative must be evaluated. The evaluation must also include a comparison of alternatives leading to the selection of a preferred alternative and an explanation of the reasons for the selection of the proposed facility.

~~(1)~~ (2) An application for an electric transmission line must include an evaluation of transmission alternatives, including alternative end points and intermediate substation locations for the transmission line and upgrading or replacing an existing facility that would serve to provide the needed reinforcement that would be provided by the proposed facility.

An application must also evaluate alternative timing of other electric transmission lines planned by the applicant, ~~including those identified in the long-range plan filed with the department under ARM 17.20.502 or in other planning documents,~~ which in whole or in part would address the problem situation or opportunity or provide the needed reinforcement that would be provided by the proposed facility. For each transmission alternative, a minimum of ~~3~~ three load flow studies must be provided, as required by ARM 17.20.922~~(5)~~.

(2) through (6) remain the same, but are renumbered (3) through (7).

AUTH: 75-20-105, MCA

IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: The rule is being renumbered to meet Secretary
MAR Notice No. 17-218

20-10/21/04

of State formatting guidelines. In 75-20-301(4), MCA, there was a distinction between utilities and non-utilities that was repealed in 1997. The current version of MFSA no longer contains this qualifier in 75-20-301, MCA; all facilities are treated the same. Therefore, the term "service area utilities" has been removed from the rule title.

ARM 17.20.502 was repealed in 2001 and the long-range plan filed under that rule was repealed in 1993. Therefore, the language referring to the repealed rule and long-range plan is proposed for deletion.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.1305 ~~SERVICE AREA UTILITIES~~, ELECTRIC TRANSMISSION LINES, CRITERIA FOR EVALUATION OF ALTERNATIVES (1) through (4) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: In 75-20-301(4), MCA, there was a distinction between utilities and non-utilities that was repealed in 1997.

See Section 15, Chapter 329, Laws of 1997. The current version of MFSA no longer contains this qualifier in 75-20-301, MCA, and all facilities are treated the same. Therefore, the term "service area utilities" has been removed from the heading.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.30.1311 PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES

(1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1426 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (1) An application for a linear facility must contain an alternative siting study and baseline

environmental data as specified in ~~ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447~~ Circular MFSA-2.

(2) The board adopts and incorporates by reference department Circular MFSA-2, "Application Requirements for Linear Facilities", which sets forth the requirements for an alternative siting study and the baseline study requirements and impact assessment to be included in an application for a linear facility. Copies may be obtained from the Department of Environmental Quality, Environmental Management Bureau, P.O. Box 200901, Helena, Montana 59620-0901.

~~(2) The alternative siting study for an electric transmission line or a pipeline must include:~~

~~(a) delineation of the study area (see ARM 17.20.1434);~~

~~(b) a reconnaissance of the study area (see ARM 17.20.1435);~~

~~(c) selection of study corridors (see ARM 17.20.1436);~~

~~(d) an inventory of the study corridors (see ARM 17.20.1437 and 17.20.1438);~~

~~(e) selection of alternative routes (see ARM 17.20.1439);~~

~~(f) a baseline study of alternative routes, including baseline data collection and impact assessment (see ARM 17.20.1440, 17.20.1444, 17.20.1445);~~

~~(g) a comparison of alternative routes (see ARM 17.20.1446); and~~

~~(h) selection of the preferred route (see ARM 17.20.1447).~~

~~(3) The alternative siting study shall include any alternative routes for the facility which have alternative end points or combinations of end points identified according to ARM 17.20.1412 and 17.20.1415 that would meet the need the proposed facility is intended to address, and would have a levelized annual cost no more than 35% higher (25% higher for transmission lines 230 kV or greater voltage and 30 miles or longer) than the levelized annual cost of the facility or would have significant environmental advantages over the facility, with the end points proposed by the applicant.~~

~~(4) An application must contain a summary of the results of consultation with government agencies to identify their concerns over the proposed facility's possible locations or effects on the environment, and the way the applicant considered these concerns in identifying preferred and alternative routes for the facility.~~

~~(5) An application may contain any valid and useful existing studies, reports, or data prepared on the linear facility and may be submitted by the applicant towards fulfilling the requirements of ARM 17.20.1426 through~~

~~17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447, but shall be subject to supplementation, and shall be used by the department only to the extent it considers them applicable.~~

AUTH: 75-20-105, MCA

IMP: 75-20-211, ~~75-20-503~~, MCA

REASON: These proposed amendments are necessary because the detailed information requirements of alternative siting studies, the baseline study and the impact assessment are proposed for transfer, with amendments, to Circular MFSA-2.

The proposed addition of new (2) is necessary to adopt Circular MFSA-2 that requires alternative siting studies, and a baseline study and impact assessment for linear facilities.

The Board is proposing to transfer these requirements, with amendments, to Circular MFSA-2.

Section 75-20-503, MCA, was repealed in 1997. The proposed amendment to the implementation section reflects this.

17.20.1604 LINEAR FACILITIES, UTILITIES, PUBLIC INTEREST, CONVENIENCE AND NECESSITY STANDARD (1) In order for the ~~board~~ department to find that a proposed facility will serve the public interest, convenience and necessity as required by 75-20-301(2)(g), MCA, the ~~board~~ department must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) through (2) remain the same.

AUTH: 75-20-105, MCA

IMP: 75-20-301, ~~75-20-503~~, MCA

REASON: The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

The Legislature, in Chapter 329, Laws of 1997, transferred the authority to issue certifications, which includes findings referenced in this rule, to the Department. This duty had previously resided with the Board. Proposed changes reflect this legislative direction. In 75-20-301(4), MCA, there was a distinction between utilities and non-utilities that was repealed in 1997. The current version of MFSA no longer contains this qualifier in 75-20-301, MCA; all facilities are treated the same. Therefore, the term "utilities" has been

deleted from the rule title.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1606 ELECTRIC TRANSMISSION LINES, ~~SERVICE AREA UTILITIES~~, NEED STANDARD (1) In order to find that there is a need for an electric transmission facility as required by 75-20-301(2)(a), MCA, ~~that is proposed by a service area utility as defined by ARM 17.20.301~~, the ~~board~~ department must find that the services of the facility are needed by finding and determining the following:

~~(1)~~ (a) For facilities for which insufficient power transfer capacity at adequate voltage levels under normal operating conditions is a stated basis of need in the application, either that:

(a) remains the same, but is renumbered (i).

~~(b)~~ (ii) if the finding in ~~(a) above~~ (1)(a)(i) cannot be met, that the expected benefits of constructing a transmission line with the transfer capacity of the proposed line, instead of ~~± a line~~ for which the finding in ~~(a) above~~ (1)(a)(i) can be met, warrant the ~~resource commitment~~, costs based on a finding and determination of the following:

~~(i)~~ (A) the expected benefits of building the proposed line compared with ~~± a line~~ that would satisfy ~~(a) above~~ (1)(a)(i); and

~~(ii)~~ (B) the extra costs of building the proposed line compared with ~~± a line~~ that would satisfy ~~(a) above~~ (1)(a)(i).

(2) remains the same, but is renumbered (b).

(a) and (b) remain the same, but are renumbered (i) and (ii).

(3) and (4) remain the same, but are renumbered (c) and (d).

(a) and (b) remain the same, but are renumbered (i) and (ii).

(5) remains the same, but is renumbered (e).

(a) and (b) remain the same, but are renumbered (i) and (ii).

(6) remains the same, but is renumbered (f).

(a) and (b) remain the same, but are renumbered (i) and (ii).

(7) remains the same, but is renumbered (g).

(a) and (b) remain the same, but are renumbered (i) and (ii).

(8) remains the same, but is renumbered (h).

(a) remains the same, but is renumbered (i).

(i) through (iii) remain the same, but are renumbered (A) through (C).

(b) and (c) remain the same, but are renumbered (ii) and

(iii).

(i) through (iv) remain the same, but are renumbered (A) through (D).

(9) remains the same, but is renumbered (i).

AUTH: 75-20-105, MCA

IMP: 75-20-301, ~~75-20-503~~, MCA

REASON: Before 1997, 75-20-301(4), MCA, provided that considerations of need, public need, or public convenience and necessity apply only to utilities. That limitation was repealed in 1997. The current version of MFSA no longer contains this limitation. In 75-20-301, MCA, all facilities are treated the same. Therefore, the term "service area utilities" is being deleted from the rule title and (1).

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered. The word "board" is also being changed to "department" in (1) because the Department is now charged with making the decision on an application and the Board only hears appeals.

Subsection (1)(b), renumbered (1)(a)(ii), is being amended to clarify language for a showing of need when insufficient power transfer capacity occurs at adequate voltage levels under normal operating conditions. The old rule had been rewritten and changed in a manner that was grammatically nonsensical (the word "one" was changed to "1") causing ambiguity between a reference to (1) and "a line".

Section 75-20-503, MCA, was repealed in 1997, and thus ARM 17.20.1601 no longer implements that law.

The rule is being renumbered to meet Secretary of State formatting guidelines.

17.20.1607 LINEAR FACILITIES, MINIMUM IMPACT STANDARD

(1) In order for the ~~board~~ department to find and determine that a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301~~(1)(c)~~, MCA:

(a) the ~~board~~ department finds and determines:

(i) that the expected net present value of costs, including monetary costs of construction to the applicant, external monetary costs, and the value of reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative that would meet the need finding required by ARM 17.20.1606~~(1)~~. Other available alternatives include transmission alternatives,

alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of transmission reliability and the no action alternative;

(ii) that unquantified environmental impacts are not significantly adverse to alter the finding required by (1)(a)(i) ~~above~~;

(iii) that all mitigation measures included in the mitigation plan in (1)(~~g~~)(a)(vii)(C) ~~below~~ have been incorporated in the cost finding required by (1)(a)(i) ~~above~~;

(iv) that the ~~route~~ final location for the facility achieves the best balance among the preferred ~~route~~ location criteria listed in ~~ARM 17.20.1427~~ Circular MFSA-2, section 3.1 considering environmental impact and economic cost;

(v) that the ~~route~~ final location for the facility will not cross one of the ~~board's designated exclusion~~ areas listed in ~~ARM 17.20.1428~~ Circular MFSA-2, section 3.2(1)(d)(i) and (ii), unless the legislative or administrative unit of government with direct authority over the area has given the applicant permission to locate the facility there;

(vi) that reasonable alternative locations for the facility were considered in selecting the ~~route~~ final location, pursuant to ~~ARM 17.20.1431, 17.20.1436, and 17.20.1439~~ Circular MFSA-2, section 3.0;

(vii) that the ~~route~~ final location for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility ~~on~~ in any reasonable alternative location, based on the following:

(A) and (B) remain the same.

(C) adoption of an acceptable mitigation plan based on the measures identified in (1)(a)(vii)(B) ~~above~~, including environmental specifications, that will be included in conditions to the certificate; and

(D) remains the same.

(viii) ~~If~~ if in making the finding required by (1)(a)(vii) ~~above~~, the ~~route~~ final location for the facility crosses one or more of the ~~sensitive~~ areas listed in ~~ARM 17.20.1429 or 17.20.1431, or the areas of concern listed in 17.20.1430 or 17.20.1431~~ Circular MFSA-2, section 3.2(1)(d)(iii) through (xi) and section 3.4(1)(b) through (w) for transmission lines and in Circular MFSA-2, sections 3.2(1)(e) and 3.4(2) for pipelines, either that no significant adverse environmental impacts would result in the area(s); or

(A) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for ~~which the sensitive these areas or areas of concern are designated~~ have been identified;

(B) remains the same.

(C) that an acceptable mitigation plan based on the

measures identified in (1)(a)(viii)(B) ~~above~~, including environmental specifications, has been identified and will be included in conditions to the certificate; and

(D) remains the same.

(2) The ~~board~~ department must condition its approval of a facility on the following standards:

(a) through (g) remain the same.

(h) for all linear facilities, that any other standards the ~~board~~ department deems important will be met.

AUTH: 75-20-105, MCA

IMP: 75-20-105, 75-20-211, 75-20-301, ~~75-20-503~~, MCA

REASON: Throughout this rule references are made to an approval of a "route" followed by approval of a centerline. Section 75-20-205, MCA, which authorized the centerline approval process, was repealed in 1997. A centerline determination is no longer authorized by statute. Centerlines for linear facilities would be addressed in the initial Department decision on the final location of a facility. Consequently references to routes and centerlines are proposed to be replaced with reference to final location.

The term "board" is being changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals. Remaining amendments are proposed for consistency in the transfer of rules to Circular MFSA-2. The language in the proposed amendment to (1)(a)(v) was previously in ARM 17.20.1428, which is proposed for repeal, and is necessary to support findings required in 75-20-301, MCA.

Section 75-20-503 was repealed in 1997, and thus ARM 17.20.1601 cannot implement that law.

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.1803 CERTIFICATE AMENDMENT PURSUANT TO CHANGE IN DEPARTMENT OF ENVIRONMENTAL QUALITY OR BOARD OF ENVIRONMENTAL REVIEW PERMIT (1) An amendment affecting, amending, altering or modifying a decision, opinion, order, certification or permit issued by the department of environmental quality or board of environmental review under the applicable statutes administered by those agencies in accordance with 75-20-219~~(5)~~, MCA, shall be adopted by the ~~board~~ department and incorporated as a certificate amendment, as follows:

~~(1)~~ (a) within 10 days of the issuance of an amendment by the department or board, the certificate holder shall serve

the ~~board~~ department with a certified copy of the amendment;

~~(2)~~ (b) the ~~board~~ department shall issue a notice of proposed action to modify the certificate to fully and completely incorporate the amendment authorized by the department or board;

(3) and (4) remain the same, but are renumbered (c) and (d).

~~(5)~~ (e) if no show-cause hearing is requested or required, the ~~board~~ department shall take the proposed action as set forth in the notice pursuant to ~~(2)~~ (1)(b) of this rule;

(6) remains the same, but is renumbered (f).

AUTH: 75-20-105, MCA

IMP: 75-20-219, MCA

REASON: The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered. The term "board" is being changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals. This change to 75-10-219, MCA, was made in the 2001 legislative session. See Chapter 293, Laws of 2001.

17.20.1804 DECISIONS ON CERTIFICATE AMENDMENTS (1) In order for the ~~board~~ department to determine that an amendment to a certificate should be granted or modified, the ~~board~~ department must find and determine that the amendment will not materially alter the findings required by subchapter 16 that were the basis for granting the certificate.

(2) In making the findings required by (1) ~~of this rule~~, the ~~board~~ department shall limit itself to consideration of the effects that the proposed change or addition to the facility contained in the notice for the certificate amendment may produce.

AUTH: 75-20-105, MCA

IMP: 75-20-219, MCA

REASON: The term "board" is being changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals. This change to 75-10-219, MCA, was made in the 2001 legislative session. See Chapter 293, Laws of 2001.

17.20.1901 MONITORING REQUIRED BY CERTIFICATE (1) As required by 75-20-303~~(3)(a)(v)~~, MCA, the certificate shall

include a plan for monitoring environmental effects of the facility and associated facilities. The plan shall specify the types of monitoring data and activities required, and the terms and schedules of monitoring data collection, and assign responsibilities for data collection, inspection, reporting, or other activities required to effectively monitor the facility and associated facilities.

(2) The certificate holder shall reimburse the department for all costs incurred relative to the monitoring plan approved by the ~~board~~ department in accordance with 75-20-402, MCA.

(3) All activities of the certificate holder or the certificate holder's representative during preconstruction, construction, reclamation, operation, maintenance and decommissioning of the facility shall be conducted in accordance with the environmental specifications and conditions to the certificate approved by the ~~board~~ department.

AUTH: 75-20-105, MCA

IMP: 75-20-301, 75-20-303, 75-20-402, MCA

REASON: The term "board" is proposed to be changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals.

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.1902 ~~ELECTRIC TRANSMISSION LINES~~ LINEAR FACILITIES, MONITORING REQUIREMENTS (1) Within 15 days of the ~~board's~~ department's approval of a ~~centerline~~ final location, the department shall designate an environmental inspector to monitor compliance with the environmental specifications and any other conditions contained in the certificate. The environmental inspector shall be the certificate holder's liaison with the department on all subsequent activities related to the facility.

(2) Within 15 days of the ~~board's~~ department's approval of a ~~centerline~~ final location, the certificate holder shall designate a chief field representative to be the department's liaison with the certificate holder on all subsequent activities related to the facility.

(3) remains the same.

(4) The certificate holder shall submit the following information to the department at least 15 days prior to the

commencement of construction of any segment of the project. Any information previously submitted in an application ~~or during the centerline evaluation of the facility~~ may be referenced.

(a) On orthophoto mosaics or plan and profile maps, or on available USGS 7.5 minute topographic maps, at a scale of 1:24,000, the location of the following as appropriate:

(i) through (iii) remain the same.

(iv) clearing backlines, clearing limits or disturbance limits, staging sites, and pulling sites, if known;

(v) through (5) remain the same.

(6) If a construction bond is required by the certificate, the certificate holder shall submit to the department proof that the construction bond has been obtained prior to the commencement of construction. Pursuant to the certificate, this bond may be held until construction is complete and the ~~board~~ department has determined that all environmental specifications have been followed, that cleanup is complete, that damage has been repaired, and that recontouring, site restoration, and revegetation are progressing satisfactorily.

(a) In the event the department finds that the certificate holder is not correcting damage created during construction in a satisfactory manner, the department may ~~file a forfeiture of bond report with the board.~~

~~(b) The board shall subsequently determine the amount and disposition of all or a portion of the bond to correct any damage that has not been corrected by the certificate holder.~~

(7) For electric transmission lines greater than 230 kV and pipeline facilities, the certificate holder shall hold a preconstruction conference at least 15 days prior to commencement of construction activities to brief the following persons regarding the content of the environmental specifications required by the certificate, to identify any specific geographical areas of concern where special construction precautions may be required, and to explain the role of the environmental inspector:

(a) through (8) remain the same.

(9) If a construction and reclamation bond is required by the certificate pursuant to ARM 17.20.1706(2), at the time the construction bond is released by the ~~board~~ department, the certificate holder shall submit proof that the reclamation bond has been obtained. Pursuant to the certificate, portions of this bond or bonds may be held for ~~± one year and 5 five~~ years, respectively, or until the ~~board~~ department determines that revegetation and road closures adequately meet the requirements specified in the certificate and in (10) ~~of this rule.~~

(a) In the event the department finds that revegetation has not attained the growth required after ± one year or 5 five years specified in (10) ~~of this rule~~, the department may find the certificate holder in substantive noncompliance with the terms of the reclamation bond and may ~~file a forfeiture of bond report with the board.~~

~~(b) The board may subsequently~~ determine the amount and disposition of all or a portion of the bond or bonds to achieve satisfactory reclamation and revegetation.

(10) The following standards for reclamation shall be used to determine reclamation bond release or to determine that expenditure of the reclamation bond is necessary to meet the requirements of the certificate for transmission lines, unless otherwise determined by the ~~board~~ department:

(a) and (b) remain the same.

(c) on private lands the certificate holder may contract with the landowner for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on the property upon showing the ~~board~~ department that the property owner wants different reclamation standards from those specified in (10)(a) and (b) ~~above~~ applied on his property and that not reclaiming to the standards specified in (10)(a) and (b) ~~above~~ would not have adverse impacts on the public and other landowners; and

(d) on public lands the certificate holder may contract with the affected land management agency for revegetation or reclamation which would release the certificate holder upon showing the ~~board~~ department that the land management agency wants different reclamation standards from those specified in (10)(a) and (b) ~~above~~ applied on its lands and that not reclaiming to the standards specified in (10)(a) and (b) ~~above~~ would not have adverse impacts on the public and other landowners.

(11) ~~At the direction of the board, the~~ The department may formulate and carry out a plan to ensure that the standards in (10) ~~of this rule~~ are accomplished.

(12) In the event that the department finds the contractor responsible for construction of the facility to be in violation of the construction and mitigation standards or any of the conditions of the certificate, and finds that the certificate holder cannot or will not take appropriate action to correct the problem, the department shall immediately file an incident report with the certificate holder ~~and the board~~, as follows:

(a) and (b) remain the same.

(c) ~~Immediately upon~~ Upon correction of any violation described in an incident report, the department shall file a compliance report with the certificate holder ~~and the board~~

stating that the problem has been satisfactorily resolved.
(d) remains the same.

AUTH: 75-20-105, MCA

IMP: 75-20-301, 75-20-303, 75-20-402, MCA

REASON: The word "centerline" in (1) and (2) and the phrase "or during the centerline evaluation of the facility" in (4) are proposed for deletion because 75-20-205, MCA, which authorized the centerline approval process, was repealed in 1997. A centerline determination is no longer authorized by statute. Centerlines for linear facilities are being addressed in the initial Department decision rather than in a two-step process. The proposed amendment to (4)(a) is necessary to prevent applicants from submitting maps containing no substantive information in an effort to comply with the "map" requirement.

The phrase "clearing backlines" is a term-of-art used in the electric transmission line industry. The phrase "clearing limits or disturbance limits" is proposed for addition in (4)(a)(iv) to allow the Department to understand the amount of disturbance proposed for any linear facility, especially pipeline facilities, not just a transmission line in a forested area.

Currently there are no procedures set by rulemaking addressing pre-construction procedures for pipeline facilities. The proposed amendment in (7) would apply the procedures that have been used to monitor transmission facilities. These procedures are necessary to determine with whom the Department will communicate, disturbance areas and when construction is supposed to commence.

The term "board" would be changed to "department" because the Department is now charged with making decisions on applications and bond forfeiture and the Board only hears appeals.

In (10), the phrase "for transmission lines" is being added to qualify that the reclamation standards would continue to apply only to transmission lines. Reclamation standards for pipelines would be handled on a case-by-case basis as part of the certification process. The current reclamation standards have been developed primarily for transmission lines and do not appropriately address pipeline disturbances. Thus, the Department proposes reviewing pipeline reclamation standards on a case-by-case basis.

In (12)(c), the word "immediately" is proposed for deletion because typically the Department does not employ full time inspectors. Because operation of the facility is not suspended pending completion of the report, there is no need

to require "immediate" filing of the compliance report. The proposed amendment would allow the Department to more efficiently schedule inspections of corrected violations.

4. The rules proposed for repeal are as follows:

17.20.1427 LINEAR FACILITIES, PREFERRED ROUTE CRITERIA (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1291, Administrative Rules of Montana.

17.20.1428 LINEAR FACILITIES, EXCLUSION AREAS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1291, Administrative Rules of Montana.

17.20.1429 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, SENSITIVE AREAS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1292 and 17-1293, Administrative Rules of Montana.

17.20.1430 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, AREAS OF CONCERN (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1293 through 17-1295, Administrative Rules of Montana.

17.20.1431 LINEAR FACILITIES, PIPELINES, SENSITIVE AREAS AND AREAS OF CONCERN (AUTH: 75-20-105, MCA; IMP, Sec. 75-20-211, 75-20-503, MCA), located at page 17-1296, Administrative Rules of Montana.

17.20.1434 LINEAR FACILITIES, DELINEATION OF THE STUDY AREA (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1301, Administrative Rules of Montana.

17.20.1435 LINEAR FACILITIES, RECONNAISSANCE (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1302, Administrative Rules of Montana.

17.20.1436 LINEAR FACILITIES, SELECTION OF STUDY CORRIDORS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1302, Administrative Rules of Montana.

17.20.1437 LINEAR FACILITIES, INVENTORY, GENERAL REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1302 and 17-1303, Administrative Rules of Montana.

17.20.1438 LINEAR FACILITIES, INVENTORY, ENVIRONMENTAL

INFORMATION (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1305 through 17-1307, Administrative Rules of Montana.

17.20.1439 LINEAR FACILITIES, SELECTION OF ALTERNATIVE ROUTES (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1307, Administrative Rules of Montana.

17.20.1440 LINEAR FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1308 and 17-1309, Administrative Rules of Montana.

17.20.1444 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1313 through 17-1321, Administrative Rules of Montana.

17.20.1445 LINEAR FACILITIES, PIPELINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1323 through 17-1325, Administrative Rules of Montana.

17.20.1446 LINEAR FACILITIES, COMPARISON OF ALTERNATIVE ROUTES (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1327, Administrative Rules of Montana.

17.20.1447 LINEAR FACILITIES, SELECTION OF THE PREFERRED ROUTE (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1328, Administrative Rules of Montana.

REASON: These rules are proposed for repeal because the Board is proposing to place the text of the rules containing baseline study requirements and impact assessment for linear transmission facilities in Department Circular MFSA-2. The Board is also proposing modification of this text as indicated in the proposed Circular.

5. Concerned persons may obtain a copy of proposed department Circular MFSA-2 by calling (406) 444-0988 or by writing to the Board at the address listed in paragraph 6 below. In addition, a copy of the Circular is available at <http://www.deq.state.mt.us/Notices/mfs.asp>.

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., December 3, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@state.mt.us, or may be made by completing a request form at any rules hearing held by the Board.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

John F. North

JOHN F NORTH
Rule Reviewer

BY: Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, October 8, 2004.